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AUG 1 1 2004

OFFICE OF PETITIONS

In re Application of
Ralf Reimelt et al.
Application No. 09/899,502
Filed: July 6, 2001
Title: APPARATUS FOR DETERMINING
AND/OR MONITORING THE FILLING
LEVEL OF A PRODUCT IN A
CONTAINER

DECISION ON PETITION
UNDER 37 C.F.R. §1.183

BACKGROUND

This is in response to the petition filed January 14, 2004, under 37 C.F.R. §1.182, requesting that 37 C.F.R. §1.193(b)(1) be waived so that an untimely reply brief to the Examiner's Answer and a request for an oral hearing can be entered.

On December 17, 2002, the Office issued a final rejection. On April 17, 2003, the Applicant submitted a Notice of Appeal, along with a one-month extension of time. On August 18, 2003, an Appeal Brief was received, along with a two-month extension of time. On November 3, 2003, the Examiner's Answer was mailed. Petitioner has set forth that both a reply brief to the Examiner's Answer and a request for an oral hearing were prepared, but were never mailed to the Office. Petitioner has alleged that the failure to submit the papers was due to a merger his law firm was involved in, as the papers were not transferred to the new firm of record.

Petitioner has included a reply brief to the Examiner's Answer, a request for an oral hearing, the appropriate fees and the petition fee, and a change of address.

THE RELEVANT PORTIONS OF THE C.F.R. AND MPEP

37 C.F.R. § 1.183: Suspension of rules.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h).

[47 FR 41278, Sept. 17, 1982, effective Oct. 1, 1982]

37 C.F.R. § 1.193 Examiner's answer and reply brief, sets forth, in part.

(b)

(1) Appellant may file a reply brief to an examiner's answer or a supplemental examiner's answer within two months from the date of such examiner's answer or supplemental examiner's answer. See § 1.136(b) for extensions of time for filing a reply brief in a patent application and § 1.550(c) for extensions of time for filing a reply brief in a reexamination proceeding. The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief. A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.

37 CFR 1.194 Oral hearing, sets forth, in part:

(b) If appellant desires an oral hearing, appellant must file, in a separate paper, a written request for such hearing accompanied by the fee set forth in § 1.17(d) within two months from the date of the examiner's answer. If appellant requests an oral hearing and submits therewith the fee set forth in § 1.17(d), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. See § 1.136(b) for extensions of time for requesting an oral hearing in a patent application and § 1.550(c) for extensions of time for requesting an oral hearing in a reexamination proceeding.

(c) If no request and fee for oral hearing have been timely filed by appellant, the appeal will be assigned for consideration and decision. If appellant has requested an oral hearing and has submitted the fee set forth in § 1.17(d), a day of hearing will be set, and due notice thereof given to appellant and to the primary examiner. A hearing will be held as stated in the notice, and oral argument will be limited to twenty minutes for appellant and fifteen minutes for the primary examiner unless otherwise ordered before the hearing begins. If the Board decides that a hearing is not necessary, the Board will so notify appellant.

MPEP 1209, Oral Hearing, sets forth, in part:

37 CFR 1.194(b) provides that an appellant who desires an oral hearing before the Board must request the hearing by filing, in a separate paper, a written request therefor, accompanied by the appropriate fee set forth in 37 CFR 1.17(d), within 2 months after the date of the examiner's answer. This time period may only be extended by filing a request under either 37 CFR 1.136(b) or, if the appeal involves an ex parte reexamination proceeding, under 37 CFR 1.550(c).

ANALYSIS

37 C.F.R. §1.183 provides a mechanism by which petitioners who are facing extraordinary situations may seek to have the requirements of the regulations suspended. With the instant petition, Petitioner's law firm merged with another, and neither the reply brief to the Examiner's Answer nor the request for an oral hearing were transferred from one firm to the other. As such, neither was submitted to the Office in a timely manner.

There does not appear to be anything particularly extraordinary about two law firms merging into one. Furthermore, as one would expect the two firms to properly deliver the associated files to where they need to be upon the execution merger, justice does not seem to require the waiver of the \$110.00 one-month extension of time fee to make timely these submissions.

CONCLUSION

As such, the petition is **DISMISSED**.

The \$110.00 extension of time fee has been charged to Petitioner's Deposit Account, as authorized in the file, and both the reply brief to the Examiner's Answer and the request for an oral hearing have been entered.

After the mailing of this decision, the application will be forwarded to TC 2800.

The change of address has been entered and made of record.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011. Please note that on approximately September 28, 2004, the Office of Petitions will relocate to the new PTO location in Alexandria. Although the mailing address will remain the same, the general phone number for the Office of Petitions which should be used for status requests will change to 571-272-3282, and the telephone number for the undersigned will change to 571-272-3225.



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